



California Fair Political Practices Commission

June 22, 1988

Beverly Reardon Dutra
1251 Escobar Street
Martinez, CA 94553

Re: Request For Advice
Our File A-88-198

Dear Ms. Dutra:

I am writing in response to your letter of June 15, 1988, in which you requested copies of Mr. Walter's advice request and our response. A copy of his letter is enclosed. Our response, however, has not been written yet. I will send you a copy as soon as it has been sent to Mr. Walter.

As I explained to you over the telephone on June 14, 1988, while the legal division of the Fair Political Practices Commission provides advice about a public official's future conduct, the enforcement division investigates complaints about past conduct. Therefore, if you have a complaint about an official's past conduct, you should file the complaint and supporting information with the enforcement division. A complaint form is enclosed. The telephone number for the enforcement division is (916) 322-6441. If you want to send the material to the division, address the letter to: Enforcement Division, Fair Political Practices Commission, P.O. Box 807, Sacramento, CA 95804-0807.

If you have questions about this letter, feel free to call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

Margarita Altamirano
By: Margarita Altamirano
Counsel, Legal Division

DMG:MA/aa

Encl.



California Fair Political Practices Commission

July 5, 1988

Jeffrey A. Walter
Office of City Attorney
City of Martinez
525 Henrietta Street
Martinez, California 94553-2394

Re: Your Request For Advice
Our File No. A-88-198

Dear Mr. Walter:

You have requested advice on behalf of Steven Jesperson about application of conflict of interest provisions of the Political Reform Act (the "Act")^{1/} to his duties as Director of the Department of Leisure Services for the City of Martinez. This letter concerns Mr. Jesperson's participation in future governmental decisions only; we make no comment concerning Mr. Jesperson's past conduct. (Regulation 18329(b)(8)(A), copy enclosed.)

In your letter, you also requested advice about application to Mr. Jesperson of Government Code Section 1090 and other state laws regarding incompatible offices and the use of public facilities for private benefit. We do not administer Section 1090 nor state statutes regarding incompatible offices or the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

use of public facilities for private benefit. Therefore, in this letter we answer only your questions concerning application of the conflict of interest provisions of the Act to governmental decisions. We refer you to the state Attorney General's office for advice about your other questions.

QUESTIONS

Mr. Jesperson is Director of Leisure Services for the City of Martinez. He also receives income of more than \$250 from the United States Slow Pitch Softball Association (USSSA), the Golden Bay Officials Association (Golden Bay), and the West County Sports Association (West County). USSSA and Golden Bay are nonprofit organizations.

1. May Mr. Jesperson participate in negotiations for a city contract with Golden Bay?
2. May Mr. Jesperson participate in decisions concerning scheduling of tournaments and events sanctioned by USSSA or sponsored by West County?
3. May Mr. Jesperson participate in decisions concerning installation of lights at the city's Joe DiMaggio softball field?

CONCLUSIONS

1. Terms of the present contract between the city and Golden Bay show that a decision to renew the contract would have a foreseeable material financial effect on Golden Bay. Therefore, Mr. Jesperson is disqualified from participating in any part of the negotiations, formation, or renewal of any contract between the city and Golden Bay because Golden Bay is a source of \$250 or more in income to him.
2. Based on the facts you have provided, scheduling tournaments and events is not a governmental decision under the Act. Therefore, even though USSSA and West County are sources of income to Mr. Jesperson, he may participate in decisions to schedule city league games and tournaments that involve USSSA and West County.
3. Mr. Jesperson would be disqualified from participating in a governmental decision to install lights at Joe DiMaggio softball field if the decision would have a foreseeable and material financial effect on USSSA, Golden Bay or West County.

FACTS

Mr. Jesperson is Director of Leisure Services for the City of Martinez. As director, he monitors, supervises, and creates recreational programs in the city and makes recommendations about the programs to the city council and the city's parks and recreation commission.

The Department of Leisure Services also schedules events and tournaments for the city's Joe DiMaggio field and other city fields.^{2/} Department employees use a computer to schedule city league games. Staff employees assign dates for new events and tournaments based on available dates not already assigned to persons who sponsored events and tournaments the previous year. All new sponsors of events and tournaments must pay a \$300 deposit, a rental fee, and provide insurance coverage. Mr. Jesperson is responsible ultimately for the schedule submitted for approval to the parks and recreation commission.

The Department of Leisure Services has been promoting installation of lights at Joe DiMaggio softball field so that games may be played at night. As part of the department's promotion, Mr. Jesperson may be providing facts to city staff about numbers of players and spectators, traffic, the need for lights, and other information.

Mr. Jesperson also is area director of the North Coast chapter of USSSA. In 1987, USSSA paid Mr. Jesperson more than \$1,000 in income. USSSA is a nonprofit corporation. All teams playing in Martinez city leagues are required to register with USSSA. USSSA collects fees from teams registered with USSSA and from teams participating in USSSA-sanctioned tournaments. For March through November 1988, the parks and recreation commission has scheduled about 25 weekend softball tournaments, of which 22 are sanctioned by USSSA.

Golden Bay is a nonprofit corporation that contracts with local cities to provide umpires for softball games. All umpires who subcontract for Golden Bay also are dues-paying members of Golden Bay. Teams pay fees to Golden Bay for the use of umpires. In turn, for each game officiated by a Golden Bay umpire, Golden Bay gives \$1.25 to its assigning secretary. Golden Bay also turns the \$12 umpire fee over to the officiating umpire.

^{2/} In telephone conversations on June 17 and 22, 1988, Mr. Jesperson provided us with additional information about the profit status of USSSA, Golden Bay, and West County and about his department's procedure for scheduling games and events in Martinez.

Jeffrey A. Walter
July 5, 1988
Page -4 -

Mr. Jespersen is an unpaid member of the board of directors and a paid umpire with Golden Bay. In turn, Golden Bay pays Mr. Jespersen more than \$250 a year for his services as an umpire.^{3/} Mr. Jespersen has never umpired a game in Martinez for which Golden Bay provided the umpire.

The city has an oral contract with Golden Bay in which the city has agreed to use Golden Bay umpires exclusively for city league games. This contract has been renewed annually.

West County is an association that organizes, promotes, sponsors, and advertises sporting events in the north Bay Area. West County is operated for profit. Teams participating in West County-sponsored events pay fees to West County. In 1987, West County paid Mr. Jespersen about \$750 for organizing and directing events and tournaments in the north Bay Area. West County must apply to the Department of Leisure Services to schedule West County-sponsored softball and baseball events on city fields. No West County-sponsored events, however, are scheduled in Martinez for the 1988 season.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he has a financial interest. An official has a financial interest in a decision that will have a reasonably foreseeable material financial effect, different from the effect on the general public, on (1) the official or (2) on a source of income of \$250 or more promised to or received by the official within 12 months before the decision. (Section 87103(c).)

Mr. Jespersen is a public official. (Section 82048.) USSSA, Golden Bay, and West County are sources of income of \$250 or more to Mr. Jespersen. Mr. Jespersen would be disqualified from participating in a governmental decision that would have a foreseeable and material financial effect on himself or on USSSA, Golden Bay, or West County.

^{3/} In a June 16, 1988, telephone conversation you provided us with information about Mr. Jespersen's earnings from Golden Bay.

Governmental Decision

Mr. Jesperson makes a governmental decision when, while acting within the authority of his office, (1) he votes on a matter, (2) obligates or commits his agency to any course of action, or (3) enters into any contractual agreement on behalf of his agency. (Regulation 18700(b)(1), (3), and (4), copy enclosed.)

Mr. Jesperson participates in a governmental decision if he does any of the following:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

Regulation 18700(c).

For example, negotiating and executing an oral contract between the Department of Leisure Services and Golden Bay involves making a governmental decision. (Regulation 18700(b)(4).) Preparing any report, analysis, or opinion about lights at Joe DiMaggio field for the park and recreation commission would be participating in a governmental decision. (Regulation 18700(c)(2).)

Based on the facts Mr. Jesperson has provided, scheduling tournaments and events is not a governmental decision. Department staff schedule events and tournaments by giving priority to repeat sponsors of events and then by assigning available dates to new sponsors based on the date of their applications and payment of deposits and rental fees. For this reason, scheduling decisions are secretarial and clerical actions

Jeffrey A. Walter
July 5, 1988
Page -6 -

that do not involve the exercise of judgment. (Regulation 18700(d)(1).) Therefore, scheduling is not a governmental decision that would present conflict of interest problems for Mr. Jesperson. We emphasize that this advice is based on the specific facts provided.

Thus, we need analyze only whether Mr. Jesperson may participate in decisions concerning the city contract with Golden Bay and installation of lights on Joe DiMaggio softball field. As stated above, Mr. Jesperson is disqualified from participating in any governmental decision that would foreseeably and materially affect himself, USSSA, Golden Bay or West County.

Oral Contract Between City and Golden Bay

Golden Bay has an exclusive oral contract with the Department of Leisure Services to provide umpires for city league games. Negotiation and formation of the contract by a public official is a governmental decision. Golden Bay is a source of income of more than \$250 to Mr. Jesperson. Thus, we must determine if the contract decision foreseeably and materially affects Golden Bay.

To require disqualification, the effect of a decision must be reasonably foreseeable. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed.)

To require disqualification, the effect of a decision also must be material. Regulation 18702.1(a)(1) and (c)(3) (copy enclosed) reflects the conclusion of the Commission that the effect of a decision on a party who is the applicant or named party in a proceeding will be considered material, unless the decision will have no financial effect on the applicant. Therefore, Regulation 18702.1(a)(1) generally prohibits Mr. Jesperson from participating in a city contract decision when a source of income of \$250 or more may be awarded the contract.

Your information about the terms of the present contract shows that Golden Bay is the exclusive provider of umpires for city league games. If the exclusive contract were not renewed, membership in Golden Bay would be likely to decline. If the number of dues-paying members decreased, there would be a financial effect on Golden Bay. Therefore, a decision about the Golden Bay contract would have a foreseeable financial effect on

Golden Bay. Accordingly, Mr. Jesperson is required to disqualify himself from participating in negotiations or any other part of the process of contracting with Golden Bay to provide umpires for city league games.^{4/}

Decision To Install Lights At Joe DiMaggio Field

Installation of lights at Joe DiMaggio field would allow sporting events to be held at night, thereby increasing the use and revenue-producing ability of the field. In turn, increased use of Joe DiMaggio field could produce more income for the three organizations from which Mr. Jesperson receives income.

USSSA and Golden Bay are nonprofit entities. When a governmental decision affects a nonprofit organization, the public official should use the guidelines in Regulation 18702(b)(3)(D) (copy enclosed) to determine whether the effect of a decision will be material. Regulation 18702(b)(3)(D) provides that the effect of a decision will be material if it will have a significant effect on a source of income that is a nonprofit entity. Therefore, Mr. Jesperson would be disqualified from participating in the decision to install lights at Joe DiMaggio field, if it is foreseeable that the decision would have a significant effect on USSSA or Golden Bay. (Regulation 18702(b)(3)(d).)

At the moment, the Commission does not have specific monetary guidelines for determining what would be a significant effect on a nonprofit entity. (See Pitts Advice Letter, No. A-85-028, copy enclosed, for general guidelines.) The Commission, however, has notified the public that it is considering adoption of Regulation 18702.5 (copy enclosed). The Commission will hold a hearing on the proposed regulation on July 26, 1988. Mr. Jesperson may want to participate in the hearing process or contact us for further advice after July 26.

^{4/} Regulation 18702.1(a)(4) also prohibits Mr. Jesperson from participating in a decision that foreseeably would increase or decrease his personal income by at least \$250 in a year. Mr. Jesperson has not officiated any games in Martinez and has no plans to do so. For this reason, a change in the Golden Bay contract will not affect his income from Golden Bay. Therefore, subdivision (a)(4) of Regulation 18702.1 does not apply to Mr. Jesperson and it would not be a basis for disqualification from the contract decision.

Jeffrey A. Walter
July 5, 1988
Page -8 -

Mr. Jespersen also should determine whether the decision to install lights will have a material effect on West County. Because West County is a business entity, he should use the guidelines in Regulation 18702.2 (copy enclosed) to evaluate the financial effect of such a decision. For example, we will assume West County is a small business not qualified for public sale. If so, it would be covered by Regulation 18702.2(g). If a decision to install lights would be likely to result in an increase or decrease in gross revenues of \$10,000 or more for a fiscal year for West County, Mr. Jespersen would be disqualified from participating in the decision.

I hope this letter satisfactorily answers your advice request. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel



By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Enclosures



City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

Martinez: (415) 372-3502
Santa Rosa: (707) 523-0732

Waterfall Towers
2455 Bennett Valley Road, Suite 302B
Santa Rosa, California 95404

REPLY TO: _____

Santa Rosa

May 10, 1988

Marguerita Altamirano, Counsel
Legal Division
California F.P.P.C.
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

RE: Steve Jespersion
Our File: Conflict of Interest and
Personnel/Steve Jespersion

Dear Ms. Altamirano:

I am the City Attorney for the City of Martinez. I request opinion advice on the following issues concerning an employee of the City. This employee, Steven Jespersion, has expressly authorized my soliciting from the F.P.P.C. a legal opinion concerning the following matters.

1. Mr. Jespersion's involvement with the United States Slow Pitch Softball Association (USSSA).

Steve Jespersion is the Director of Leisure Services for the City of Martinez. His job consists of monitoring, supervising, and creating recreational programs in the City of Martinez and making recommendations to the City Council and the City's Parks and Recreation Commission concerning same. In 1986, he was appointed as Area Director for the North Coast Chapter of the USSSA which encompasses the region bounded to the east by Contra Costa County and the west by the Pacific Ocean. Its northern boundary is Oregon and its southern boundary is the City of Pleasanton. In this capacity, Steven Jespersion works with the various other USSSA Area Directors and City and County recreation departments on softball rule interpretations, team classifications, umpire training rules, player eligibilities and team/player discipline. In addition to the above, in his capacity as Area Director for the USSSA, Steve Jespersion coordinates and organizes USSSA tournaments at the various ballfields in his region, excluding such tournaments held at the Joe DiMaggio, Martinez complex.

JEFFREY A. WALTER, CITY ATTORNEY

For the 1988 summer softball season, a variety of associations and individuals (not including Mr. Jespersen) are sponsoring and organizing tournaments to be played at the Martinez, Joe DiMaggio complex. In order for such tournaments to be approved by the City's Department of Leisure Services and the City's Park and Recreation Commission, applications for certain dates must be submitted in advance of the beginning of the season and an entire schedule is submitted to the Park and Recreation Commission for its approval. As noted below, Mr. Jespersen will receive no compensation as a result of these tournaments being played or held at the Joe DiMaggio complex. However, each team entering such a tournament must pay an entry fee to the sponsoring person or association, typically over \$100 per team. In turn, this fee is used by the sponsor to pay the City for the rental of the facility, to pay for the umpires, to pay a fee to the promoter/sponsor, and to pay a certain amount to the USSSA (if the USSSA has sanctioned the tournament) for its insuring the event and other services it provides, among other things. During the months of March through October 1988, the Parks and Recreation Commission has approved and scheduled approximately 25 weekend softball tournaments 22 of which will be conducted under the eegis of the USSSA.

Each tournament sponsor who uses the City's Joe DiMaggio complex must rent the facility from the City. If the sponsor has not held events at the complex for two successive years, the sponsor must pay \$300 as a deposit, the rental fee, \$11 per game played and provide insurance coverage (either through the sponsor's own carrier or by having each team registered with the USSSA or American Softball Association). Such a sponsor is required to enter into a rental agreement with the City. Those sponsors which have held such events in two consecutive years need not pay the deposit or enter into a rental agreement. All other requirements, however, apply.

In Mr. Jespersen's FPPC Form 730 for the 1987 calendar year, he reports that the USSSA was a source of income to him in an amount between \$1,000 and \$10,000. Mr. Jespersen is paid by USSSA based upon softball events and tournaments conducted in his region. The amount he is paid per event or tournament is a flat amount. He also gets paid a percentage of the registration fees that softball teams pay to the USSSA to register with that organization. Softball teams register with the USSSA to avail the individual teams of the liability insurance offered by the USSSA, to indicate each team's willingness to abide by USSSA rules, to participate in USSSA sanctioned events and tournaments and because certain municipalities require such registration.

Of the current \$18.00 per team registration fee (paid in all cities except Martinez), \$3.00 is paid to the Norcal Director

(Dan Brown) \$3.00 is paid to Steve Jespersen as the North Coast Region Director and \$12.00 is paid to the national office of the USSSA.

Steve is not paid any sum of money based upon any tournaments or events sponsored by the USSSA in the City of Martinez. He is paid no moneys from any team which registers with the City of Martinez.

In 1979, the Manager's Committee of the City of Martinez Softball Teams met together and adopted the USSSA rules and agreed to require all teams who played in City leagues to belong to the USSSA. The City's Parks and Recreation Commission adopted and confirmed the Manager's Committee decision. Thus, all softball teams which wish to play in the City's leagues must register with the USSSA and pay a \$15.00 fee (not the full \$18.00 because Steve has consistently waived the \$3.00 fee which is normally paid to him). Enclosed is a copy of the form packet and registration material which is provided by the City to each team wishing to play in City leagues.

Steve Jespersen was first hired by the City of Martinez in 1980.

The vast bulk of the work Steve does for the USSSA is done from his home, or during off-work hours. Infrequently, he receives or makes telephone calls at the City office concerning team requests to be reclassified within the USSSA system. Sometimes, he, during working hours, will make referrals or suggest procedures to be utilized in handling injury or insurance claims being submitted by team members injured during USSSA sponsored events in Martinez and in the North Coast region. During working hours he will also participate in creating the yearly schedule of softball events which is submitted to the Parks and Recreation Commission for approval, and many of these events are USSSA sanctioned softball tournaments at the Joe DiMaggio complex.

Issue #1. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen participating in the procedure of creating or recommending a schedule of tournament play and events sponsored or sanctioned by USSSA for the City's Joe DiMaggio field?

Issue #2. If so, what steps should he take to assure that such conflicts are avoided in the future?

Issue #3. For the last four or five years, the City's Department of Leisure Services has promoted the installation of lights at the Joe DiMaggio softball field so that softball play

can occur there in the evening. Steve Jesperson has provided factual information about the number of players, the number of spectators, the amount of traffic, the need for such lights, etc., to the EIR consultants, the planning staff, the City Council and other persons involved in studying, presenting and deciding upon the proposed ballfield light program.

It is clear that the purpose of the installation of the lights is to provide for more time to play softball on the Joe DiMaggio baseball diamonds (4 in number). It is unclear how that additional time will be used, whether by private individuals who simply wish to play some softball at the diamonds at night, by additional City league play by teams who are required to register with the USSSA and/or by additional tournaments or events, in part or in whole, sponsored by USSSA and/or its directors and/or affiliates. It is also unclear whether as a result of adding the lights, additional teams will be registering with the City to play in its league or other tournaments conducted on the Joe DiMaggio fields, but if such additional registration occurs, additional moneys will be paid to the USSSA.

Under any scenario of possible increased use of the ballfields due to the installation of the lights, Mr. Jesperson will not receive any additional income from the USSSA.

Does Mr. Jesperson's participating in the EIR and planning process pertaining to the installation of the ballfield lights and/or making recommendations with respect thereto constitute a conflict of interest within the meaning of the Fair Political Practices Act?

Issue #4. Are there any legal improprieties (e.g., incompatibility of office or Government Code §1090 violations) or problems implicated by virtue of the above-referenced facts?

2. Mr. Jesperson's involvement with the Golden Bay Officials Association.

In 1981, Steve Jesperson organized the Martinez Umpire's Association. This Association consisted of 9 persons who acted as umpires at softball games. At that time, the group was co-sponsored by the City of Martinez in regard to training, materials, postage and registration. That is to say, for approximately 5 years after its inception, most of the administrative tasks of this organization were performed during work hours by Steve Jesperson and his City staff. In addition, postage, letterhead, telephone bills and other forms of overhead were paid for by the City of Martinez in behalf of this Association. Costs associated with these materials and services were not paid for by the Association. Early on, only games

played at City of Martinez facilities were being served by the officials who are members of this organization. Within the last one to two years, the Association has secured its own letterhead and its own address. Letters and mailings are sent out by City staff at the present time, using City postage. However, the postage costs and any other incidental costs are reimbursed to the City by the Association. Any costs associated with staff time utilized in mailing Association materials is not reimbursed to the City.

The name of the organization changed to Golden Bay Officials' Association and now consists of approximately 73 members/officials and serves not only Martinez, but contracts with the cities of Richmond, Pinole, Rodeo, Pleasant Hill and the Concord Naval Weapons Station.

Steve Jespersen has served as a non-paid Board member since the Association's inception. The only paid Board member is the Assigning Secretary. In 1986, Steve Jespersen took over the position of Assigning Secretary. He served in that capacity throughout the season in 1986 and began the 1987 season. He resigned the position in May 1987 because the time spent in assigning umpires to games in municipalities under contract with the Association began to seriously infringe upon his job as the Director of the Department of Leisure Services.

While he was Assigning Secretary, he was paid \$1.25 for each game to which he assigned umpires. This fee was paid for by the teams participating in the game. For all umpires assigned to games played in the City of Martinez, Steve was never paid an Assigning Secretary fee. The fees that would have normally been paid to him were diverted to the Association's General Funds for costs incurred in training officials and other Association costs.

In addition, Steve Jespersen is an umpire and a member of the Association. Each umpire is paid \$12.00 per game officiated. The \$12.00 is paid by the teams playing in each game. Steve has never umpired a softball game played in the City of Martinez under the auspices of the Golden Bay Officials' Association.

The Golden Bay Officials' Association has an oral contract with the City to provide umpire services to league play in the City. Through this contract, only Association umpires are allowed to officiate Martinez league games. This contract was negotiated and agreed to by Steve Jespersen and is renewed on an annual basis.

The only remuneration Steve received in 1987 as a result of being a member of this Association were derived from him acting

as Assigning Secretary and from him officiating non-Martinez softball games.

The Association is essentially a not for profit organization. Fees which are paid by teams for umpires and for the Assigning Secretary are diverted to the officials and the Assigning Secretary. However, the Association does generate some income by virtue of the dues each official who is a member of the Association must pay to the Association on an annual basis. In addition, the Association generates income when one of its officials fails to appear at a game and is fined for the "no-show".

Issue No. 5. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen, in behalf of the City, negotiating and entering into the oral contract with the Golden Bay Officials Association?

Issue No. 6. Is there a conflict of interest or other legal impropriety in Mr. Jespersen utilizing City staff and/or City stamps and materials (although the cost of the latter two items is reimbursed to the City by the Association) to administer some of the Association's business?

Issue No. 7. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen being the Director of the City's Department of Leisure Services and being a member of the Association, either as a director or as an umpire?

3. Mr. Jespersen's involvement with the West County Sports Association.

This Sports Association was formed in 1977 by a group of 7 sports enthusiasts, including Mr. Jespersen. Individuals of this group and the group itself sponsor various sporting events, year round, including benefit fund raisers.

The principal function of this Association is to organize, promote and advertise sporting events at various facilities throughout the Contra Costa County and North Bay area. It applies to the various cities for permission to use, say, softball fields for the tournaments it advertises and promotes. Entry fees are paid to the Association by each team participating in the tournament. The Association, in turn, pays to the City the rental charges the City imposes upon users of its facilities.

The sole source of income derived by this organization is through its imposition of entry fees and the net income derived therefrom. On occasion, the Association requests that Steve

Jespersion organize and direct events and tournaments to be played on City of Martinez fields, including the Joe DiMaggio fields referenced above. Steve Jespersen has done this and has been paid for his work by the Association. In 1986, Steve Jespersen was paid by the Association approximately \$850 primarily from softball events that he organized, sponsored and promoted in City facilities in the cities of Rodeo, Richmond and Benicia. In 1987, he was paid by the Association for directing a softball event in the City of Martinez at one of its facilities (\$150) and received approximately \$750 from the Association which was his prorata share of the revenues generated by the Association in 1987. Said revenues were received by the Association from entry fees paid by teams participating in events throughout the North Bay area, including some events which were held in Martinez (not directed by Steve Jespersen).

The West County Sports Association's only involvement with the City of Martinez is to request permission to use City facilities for its softball and baseball tournaments. It does comply with City rules and regulations and other contractual arrangements in terms of paying the City for the use of the City facilities.

The Association, along with private entrepreneurs and other entities and persons are required to, before the beginning of each baseball season, apply to the City's Park and Recreation Commission for permission to utilize the City's facilities. The staff prepares the schedule of events at the City's softball fields upon receipt of all the various applications and submit a schedule of events to the Park and Recreation Commission for its approval. Steve Jespersen makes no recommendation as to which tournament sponsor or tournament should be scheduled for which date because there has never been any conflict in the scheduling that Steve was called upon to resolve. Ultimately, however, it is his responsibility to see that such a schedule is put together and is proposed to the Park and Recreation Commission. For the 1988 season, no events being held at any City facility are being sponsored by the West County Sports Association.

Issue No. 8. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen being the City's Director of the Department of Leisure Services and being a member of the West County Sports Association?

Issue No. 9. If so, how can said conflict be prevented from continuing?

Issue No. 10. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen receiving remuneration from said Association in the fashion

Fair Political Practices Commission
May 10, 1988
Page 8

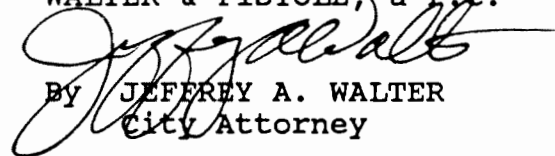
described above? Does the receipt of said remuneration implicate violations of Government Code §1090 or the incompatibility of office doctrine?

Issue No. 11. Does Mr. Jespersen's participating in, recommending and/or involvement in the creation of the annual softball tournament schedule, which includes tournaments sponsored by the Association, constitute a conflict of interest or give rise to a violation of Government Code §1090?

Your earliest attention to this matter would be greatly appreciated. Naturally, if you have further questions, please feel free to give me a call at my Santa Rosa number.

Sincerely yours,

WALTER & PISTOLE, a P.C.


BY JEFFREY A. WALTER
City Attorney

JAW:hr
LMA686

Enclosure
cc: Jack Garner (CONFIDENTIAL)
Steve Jespersen



California Fair Political Practices Commission

May 27, 1988

Jeffrey A. Walter
City Attorney
City of Martinez
525 Henrietta Street
Martinez, CA 94553-2394

Re: 88-198

Dear Mr. Walter:

Your letter requesting advice under the Political Reform Act was received on May 25, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

- We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Griffiths", is written over the typed name.

Diane M. Griffiths
General Counsel

DMG:ld



California Fair Political Practices Commission

June 22, 1988

Beverly Reardon Dutra
1251 Escobar Street
Martinez, CA 94553

Re: Request For Advice
Our File A-88-198

Dear Ms. Dutra:

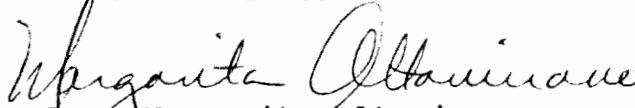
I am writing in response to your letter of June 15, 1988, in which you requested copies of Mr. Walter's advice request and our response. A copy of his letter is enclosed. Our response, however, has not been written yet. I will send you a copy as soon as it has been sent to Mr. Walter.

As I explained to you over the telephone on June 14, 1988, while the legal division of the Fair Political Practices Commission provides advice about a public official's future conduct, the enforcement division investigates complaints about past conduct. Therefore, if you have a complaint about an official's past conduct, you should file the complaint and supporting information with the enforcement division. A complaint form is enclosed. The telephone number for the enforcement division is (916) 322-6441. If you want to send the material to the division, address the letter to: Enforcement Division, Fair Political Practices Commission, P.O. Box 807, Sacramento, CA 95804-0807.

If you have questions about this letter, feel free to call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA/aa

Encl.



City of Martinez

525 Henrietta Street, Martinez, CA 94553-2394

Martinez: (415) 372-3502
Santa Rosa: (707) 523-0732

Waterfall Towers
2455 Bennett Valley Road, Suite 302B
Santa Rosa, California 95404

REPLY TO: _____

Santa Rosa

May 10, 1988

Marguerita Altamirano, Counsel
Legal Division
California F.P.P.C.
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

RE: Steve Jespersion
Our File: Conflict of Interest and
Personnel/Steve Jespersion

Dear Ms. Altamirano:

I am the City Attorney for the City of Martinez. I request opinion advice on the following issues concerning an employee of the City. This employee, Steven Jespersion, has expressly authorized my soliciting from the F.P.P.C. a legal opinion concerning the following matters.

1. Mr. Jespersion's involvement with the United States Slow Pitch Softball Association (USSSA).

Steve Jespersion is the Director of Leisure Services for the City of Martinez. His job consists of monitoring, supervising, and creating recreational programs in the City of Martinez and making recommendations to the City Council and the City's Parks and Recreation Commission concerning same. In 1986, he was appointed as Area Director for the North Coast Chapter of the USSSA which encompasses the region bounded to the east by Contra Costa County and the west by the Pacific Ocean. Its northern boundary is Oregon and its southern boundary is the City of Pleasanton. In this capacity, Steven Jespersion works with the various other USSSA Area Directors and City and County recreation departments on softball rule interpretations, team classifications, umpire training rules, player eligibilities and team/player discipline. In addition to the above, in his capacity as Area Director for the USSSA, Steve Jespersion coordinates and organizes USSSA tournaments at the various ballfields in his region, excluding such tournaments held at the Joe DiMaggio, Martinez complex.

JEFFREY A. WALTER, CITY ATTORNEY

For the 1988 summer softball season, a variety of associations and individuals (not including Mr. Jespersen) are sponsoring and organizing tournaments to be played at the Martinez, Joe DiMaggio complex. In order for such tournaments to be approved by the City's Department of Leisure Services and the City's Park and Recreation Commission, applications for certain dates must be submitted in advance of the beginning of the season and an entire schedule is submitted to the Park and Recreation Commission for its approval. As noted below, Mr. Jespersen will receive no compensation as a result of these tournaments being played or held at the Joe DiMaggio complex. However, each team entering such a tournament must pay an entry fee to the sponsoring person or association, typically over \$100 per team. In turn, this fee is used by the sponsor to pay the City for the rental of the facility, to pay for the umpires, to pay a fee to the promoter/sponsor, and to pay a certain amount to the USSSA (if the USSSA has sanctioned the tournament) for its insuring the event and other services it provides, among other things. During the months of March through October 1988, the Parks and Recreation Commission has approved and scheduled approximately 25 weekend softball tournaments 22 of which will be conducted under the eegis of the USSSA.

Each tournament sponsor who uses the City's Joe DiMaggio complex must rent the facility from the City. If the sponsor has not held events at the complex for two successive years, the sponsor must pay \$300 as a deposit, the rental fee, \$11 per game played and provide insurance coverage (either through the sponsor's own carrier or by having each team registered with the USSSA or American Softball Association). Such a sponsor is required to enter into a rental agreement with the City. Those sponsors which have held such events in two consecutive years need not pay the deposit or enter into a rental agreement. All other requirements, however, apply.

In Mr. Jespersen's FPPC Form 730 for the 1987 calendar year, he reports that the USSSA was a source of income to him in an amount between \$1,000 and \$10,000. Mr. Jespersen is paid by USSSA based upon softball events and tournaments conducted in his region. The amount he is paid per event or tournament is a flat amount. He also gets paid a percentage of the registration fees that softball teams pay to the USSSA to register with that organization. Softball teams register with the USSSA to avail the individual teams of the liability insurance offered by the USSSA, to indicate each team's willingness to abide by USSSA rules, to participate in USSSA sanctioned events and tournaments and because certain municipalities require such registration.

Of the current \$18.00 per team registration fee (paid in all cities except Martinez), \$3.00 is paid to the Norcal Director

(Dan Brown) \$3.00 is paid to Steve Jesperson as the North Coast Region Director and \$12.00 is paid to the national office of the USSSA.

Steve is not paid any sum of money based upon any tournaments or events sponsored by the USSSA in the City of Martinez. He is paid no moneys from any team which registers with the City of Martinez.

In 1979, the Manager's Committee of the City of Martinez Softball Teams met together and adopted the USSSA rules and agreed to require all teams who played in City leagues to belong to the USSSA. The City's Parks and Recreation Commission adopted and confirmed the Manager's Committee decision. Thus, all softball teams which wish to play in the City's leagues must register with the USSSA and pay a \$15.00 fee (not the full \$18.00 because Steve has consistently waived the \$3.00 fee which is normally paid to him). Enclosed is a copy of the form packet and registration material which is provided by the City to each team wishing to play in City leagues.

Steve Jesperson was first hired by the City of Martinez in 1980.

The vast bulk of the work Steve does for the USSSA is done from his home, or during off-work hours. Infrequently, he receives or makes telephone calls at the City office concerning team requests to be reclassified within the USSSA system. Sometimes, he, during working hours, will make referrals or suggest procedures to be utilized in handling injury or insurance claims being submitted by team members injured during USSSA sponsored events in Martinez and in the North Coast region. During working hours he will also participate in creating the yearly schedule of softball events which is submitted to the Parks and Recreation Commission for approval, and many of these events are USSSA sanctioned softball tournaments at the Joe DiMaggio complex.

Issue #1. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jesperson participating in the procedure of creating or recommending a schedule of tournament play and events sponsored or sanctioned by USSSA for the City's Joe DiMaggio field?

Issue #2. If so, what steps should he take to assure that such conflicts are avoided in the future?

Issue #3. For the last four or five years, the City's Department of Leisure Services has promoted the installation of lights at the Joe DiMaggio softball field so that softball play

can occur there in the evening. Steve Jesperson has provided factual information about the number of players, the number of spectators, the amount of traffic, the need for such lights, etc., to the EIR consultants, the planning staff, the City Council and other persons involved in studying, presenting and deciding upon the proposed ballfield light program.

It is clear that the purpose of the installation of the lights is to provide for more time to play softball on the Joe DiMaggio baseball diamonds (4 in number). It is unclear how that additional time will be used, whether by private individuals who simply wish to play some softball at the diamonds at night, by additional City league play by teams who are required to register with the USSSA and/or by additional tournaments or events, in part or in whole, sponsored by USSSA and/or its directors and/or affiliates. It is also unclear whether as a result of adding the lights, additional teams will be registering with the City to play in its league or other tournaments conducted on the Joe DiMaggio fields, but if such additional registration occurs, additional moneys will be paid to the USSSA.

Under any scenario of possible increased use of the ballfields due to the installation of the lights, Mr. Jesperson will not receive any additional income from the USSSA.

Does Mr. Jesperson's participating in the EIR and planning process pertaining to the installation of the ballfield lights and/or making recommendations with respect thereto constitute a conflict of interest within the meaning of the Fair Political Practices Act?

Issue #4. Are there any legal improprieties (e.g., incompatibility of office or Government Code §1090 violations) or problems implicated by virtue of the above-referenced facts?

2. Mr. Jesperson's involvement with the Golden Bay Officials Association.

In 1981, Steve Jesperson organized the Martinez Umpire's Association. This Association consisted of 9 persons who acted as umpires at softball games. At that time, the group was co-sponsored by the City of Martinez in regard to training, materials, postage and registration. That is to say, for approximately 5 years after its inception, most of the administrative tasks of this organization were performed during work hours by Steve Jesperson and his City staff. In addition, postage, letterhead, telephone bills and other forms of overhead were paid for by the City of Martinez in behalf of this Association. Costs associated with these materials and services were not paid for by the Association. Early on, only games

played at City of Martinez facilities were being served by the officials who are members of this organization. Within the last one to two years, the Association has secured its own letterhead and its own address. Letters and mailings are sent out by City staff at the present time, using City postage. However, the postage costs and any other incidental costs are reimbursed to the City by the Association. Any costs associated with staff time utilized in mailing Association materials is not reimbursed to the City.

The name of the organization changed to Golden Bay Officials' Association and now consists of approximately 73 members/officials and serves not only Martinez, but contracts with the cities of Richmond, Pinole, Rodeo, Pleasant Hill and the Concord Naval Weapons Station.

Steve Jespersen has served as a non-paid Board member since the Association's inception. The only paid Board member is the Assigning Secretary. In 1986, Steve Jespersen took over the position of Assigning Secretary. He served in that capacity throughout the season in 1986 and began the 1987 season. He resigned the position in May 1987 because the time spent in assigning umpires to games in municipalities under contract with the Association began to seriously infringe upon his job as the Director of the Department of Leisure Services.

While he was Assigning Secretary, he was paid \$1.25 for each game to which he assigned umpires. This fee was paid for by the teams participating in the game. For all umpires assigned to games played in the City of Martinez, Steve was never paid an Assigning Secretary fee. The fees that would have normally been paid to him were diverted to the Association's General Funds for costs incurred in training officials and other Association costs.

In addition, Steve Jespersen is an umpire and a member of the Association. Each umpire is paid \$12.00 per game officiated. The \$12.00 is paid by the teams playing in each game. Steve has never umpired a softball game played in the City of Martinez under the auspices of the Golden Bay Officials' Association.

The Golden Bay Officials' Association has an oral contract with the City to provide umpire services to league play in the City. Through this contract, only Association umpires are allowed to officiate Martinez league games. This contract was negotiated and agreed to by Steve Jespersen and is renewed on an annual basis.

The only remuneration Steve received in 1987 as a result of being a member of this Association were derived from him acting

as Assigning Secretary and from him officiating non-Martinez softball games.

The Association is essentially a not for profit organization. Fees which are paid by teams for umpires and for the Assigning Secretary are diverted to the officials and the Assigning Secretary. However, the Association does generate some income by virtue of the dues each official who is a member of the Association must pay to the Association on an annual basis. In addition, the Association generates income when one of its officials fails to appear at a game and is fined for the "no-show".

Issue No. 5. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen, in behalf of the City, negotiating and entering into the oral contract with the Golden Bay Officials Association?

Issue No. 6. Is there a conflict of interest or other legal impropriety in Mr. Jespersen utilizing City staff and/or City stamps and materials (although the cost of the latter two items is reimbursed to the City by the Association) to administer some of the Association's business?

Issue No. 7. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen being the Director of the City's Department of Leisure Services and being a member of the Association, either as a director or as an umpire?

3. Mr. Jespersen's involvement with the West County Sports Association.

This Sports Association was formed in 1977 by a group of 7 sports enthusiasts, including Mr. Jespersen. Individuals of this group and the group itself sponsor various sporting events, year round, including benefit fund raisers.

The principal function of this Association is to organize, promote and advertise sporting events at various facilities throughout the Contra Costa County and North Bay area. It applies to the various cities for permission to use, say, softball fields for the tournaments it advertises and promotes. Entry fees are paid to the Association by each team participating in the tournament. The Association, in turn, pays to the City the rental charges the City imposes upon users of its facilities.

The sole source of income derived by this organization is through its imposition of entry fees and the net income derived therefrom. On occasion, the Association requests that Steve

Jespersion organize and direct events and tournaments to be played on City of Martinez fields, including the Joe DiMaggio fields referenced above. Steve Jespersen has done this and has been paid for his work by the Association. In 1986, Steve Jespersen was paid by the Association approximately \$850 primarily from softball events that he organized, sponsored and promoted in City facilities in the cities of Rodeo, Richmond and Benicia. In 1987, he was paid by the Association for directing a softball event in the City of Martinez at one of its facilities (\$150) and received approximately \$750 from the Association which was his prorata share of the revenues generated by the Association in 1987. Said revenues were received by the Association from entry fees paid by teams participating in events throughout the North Bay area, including some events which were held in Martinez (not directed by Steve Jespersen).

The West County Sports Association's only involvement with the City of Martinez is to request permission to use City facilities for its softball and baseball tournaments. It does comply with City rules and regulations and other contractual arrangements in terms of paying the City for the use of the City facilities.

The Association, along with private entrepreneurs and other entities and persons are required to, before the beginning of each baseball season, apply to the City's Park and Recreation Commission for permission to utilize the City's facilities. The staff prepares the schedule of events at the City's softball fields upon receipt of all the various applications and submit a schedule of events to the Park and Recreation Commission for its approval. Steve Jespersen makes no recommendation as to which tournament sponsor or tournament should be scheduled for which date because there has never been any conflict in the scheduling that Steve was called upon to resolve. Ultimately, however, it is his responsibility to see that such a schedule is put together and is proposed to the Park and Recreation Commission. For the 1988 season, no events being held at any City facility are being sponsored by the West County Sports Association.

Issue No. 8. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen being the City's Director of the Department of Leisure Services and being a member of the West County Sports Association?

Issue No. 9. If so, how can said conflict be prevented from continuing?

Issue No. 10. Is there a conflict of interest within the meaning of the Fair Political Practices Act in Mr. Jespersen receiving remuneration from said Association in the fashion

Fair Political Practices Commission
May 10, 1988
Page 8

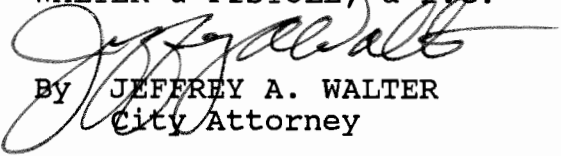
described above? Does the receipt of said remuneration implicate violations of Government Code §1090 or the incompatibility of office doctrine?

Issue No. 11. Does Mr. Jesperson's participating in, recommending and/or involvement in the creation of the annual softball tournament schedule, which includes tournaments sponsored by the Association, constitute a conflict of interest or give rise to a violation of Government Code §1090?

Your earliest attention to this matter would be greatly appreciated. Naturally, if you have further questions, please feel free to give me a call at my Santa Rosa number.

Sincerely yours,

WALTER & PISTOLE, a P.C.


By JEFFREY A. WALTER
City Attorney

JAW:hr
1MA686

Enclosure

cc: Jack Garner (CONFIDENTIAL)
Steve Jesperson

June 15, 1988
JUN 17 4 06 PM

Marquerita Altamirano
Council, Legal Division
Fair Political Practices Commission
428 J. Street, Suite 700
Sacramento, CA. 95814

Re: City of Martinez
Steve Jespersen

Dear Ms. Altamirano:

Thank you for clarifying the process whereby the Legal Division would only deal with future involvement of a public employee in an upcoming decision.

With that information, I was quite dismayed to hear that Jeff Walters, City Attorney, had submitted a letter to your office rather than enforcement and that he did not forward to you the material from the two Conflict of Interest packets which we submitted to the Martinez City Council. Our expressed concerns revolve around conflicts which may have seriously flawed the content of an extensive Environmental Review process and Document, and our challenge also deals with final interest in contractual agreements.

Under the Public Records Act, Government Code 62.50 et seq., I would like to request a copy of Mr. Walters' letter to your office and a copy of your answer to him.

Without our packet of detailed material, your office would seem to be dealing with an "estoteric" question rather than a factual review. I realize you have a deadline of June 24 but would be willing to forward our materials to you by express mail or to drive them to Sacramento on June 20 or 21. If an extension is deemed necessary, I would submit the relevant material immediately.

We were informed by local authorities that your office was empowered to indicate whether an issue merited further investigation by the Enforcement Division. If, as you suggest this assumption is erroneous, would you please indicate to whom we would forward our concerns in the Enforcement Office.

Thank you for your time.

Yours truly,

Beverly Reardon Dutra

Beverly Reardon Dutra

1251 Escobar Street
Martinez, CA. 94553

415-228-1737